

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21 /1/2020

C O R A M

THE HON'BLE MR.A.P.SAHI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

Writ Appeal No.3806 of 2019

and

C.M.P.No.24031 of 2019

1. The State of Tamil Nadu
rep. by its Secretary to Government
Department of Home
Fort St. George
Chennai 9.
 2. The Additional Director General of Police
Human Rights and Social Justice CID,
Anna Nagar West
Chennai.
 3. The Superintendent of Police
Madurai District
South Chithirai Street
Madurai.
- ... Appellants

Vs

1. S. Anand
 2. Kanagaraj
 3. M. Kallifulla
- ... Respondents

Appeal filed under Clause 15 of Letters Patent against the order passed in W.P.No.15794 of 2003, dated 2/7/2012.

For appellants Mr.R.Udaya Kumar
Additional Government Pleader

J U D G M E N T

SUBRAMONIUM PRASAD,J

Instant Writ Appeal has been filed by the State of Tamil Nadu, challenging the judgment passed by the learned Single Judge, in W.P.No.15794 of 2003, awarding a compensation of Rs.1,00,000/- (Rupees One lakh only) to the writ petitioner/first respondent herein, who had suffered torture, bodily injury and humiliation, while in custody.

2. The writ petitioner has filed W.P.No.15794 of 2003 stating that he had studied Diploma in Mechanical Engineering and was working as Supervisor. The petitioner's family consist of his widowed mother, younger sister and younger brother. The writ petitioner

states that though he is a Diploma in Mechanical Engineering he is earning his livelihood by driving a taxi. It is stated in the writ petition that his friend one Pandiyarajan and a girl travelled in his taxi from Fathima College to Cholavandhan bus stand. They alighted and the petitioner does not know about their whereabouts. The petitioner states that at about 8.00 p.m., on 17/4/2003, Mr.M.Kalifulla, Inspector of Police, Samayanallur Police Station, fifth respondent herein, called him to the Kadupatti Police Station for enquiry. He was repeatedly slapped in the Police Station, stating that his friend had eloped with a rich girl and that he has to tell them about their whereabouts. When the petitioner stated that he did not know about their whereabouts, the petitioner was beaten till about 01.30 a.m., on 18/4/2003. The petitioner was brought to the Cholavandan Police Station, where again, the beating continued. The petitioner was threatened that unless he reveals where the couple had gone, false cases would be foisted. He was kept in the Police Station. On 19/4/2003, it is alleged that the fifth respondent made the petitioner undress himself and he was beaten with a stick. The petitioner's thumb was tied and bent backwards and the

petitioner was given beatings on his thumb because of which the petitioner was unable to move his thumb. It is also stated that the family of the petitioner was humiliated by the Police when they searched his house. It is also alleged that the torture came to an end only on 22/4/2003, when Pandiyarajan and the girl were traced.

3. Since the detention of the petitioner was not in accordance with the procedure, telegrams had been sent to the Home Secretary, Government of Tamil Nadu, the Additional Director General of Police, Human Rights Commission, etc.

4. The petitioner's mother filed a petition under Section 30 of the Human Rights Act, before the Principal District and Sessions Judge, in C.C.No.6 of 2004. The learned Principal District and Sessions Judge after a detailed hearing, came to a conclusion that the petitioner was subjected to torture in custody. It was found that there was a fracture in the right thumb of the petitioner and he had to undergo a surgery for the same. The Principal District and Sessions Judge found that the fifth respondent herein who was the

accused in C.C.No.6 of 2004, was guilty of offence under Section 324 IPC r/w. Section 30 of the Human Rights Act and sentenced the fifth respondent herein to pay a fine of Rs.4,000/- in default to undergo one year rigorous imprisonment. The Principal District and Sessions Judge directed that out of Rs.4,000/-, Rs.3,500/- was to be paid to the writ petitioner as compensation under Section 357 (1) of the Criminal Procedure Code. The appeal against the said judgment has also been dismissed. The department proceedings initiated against the fifth respondent ended in a punishment of censure deferred for six months.

5. The petitioner filed W.P.No.15794 of 2003 seeking compensation for the custodial torture inflicted on him. The State filed a counter contending that since the petitioner's mother had already approached the Courts under the Human Rights Act, and since the Principal District and Sessions Judge, has already granted Rs.3,500/- as compensation, the present writ petition is not maintainable. It is stated that the petitioner cannot claim compensation two times for the same incident. The learned Single

Judge, after going through the facts, came to a conclusion that the petitioner was illegally detained from 17/4/2003 to 21/4/2003. The learned Single Judge granted a sum of Rs.1 lakh as compensation for the physical torture, humiliation and pain caused to the petitioner to be paid by the State Government which is vicariously liable for the acts of the fifth respondent herein.

6. It is this order which has been challenged in the instant writ appeal.

7. Heard Mr.R.Udayakumar, learned Additional Government Pleader for the appellants.

8. In the present case, the Principal District and Sessions Judge, after examining the facts came to a conclusion that the petitioner was in illegal custody. The Principal District and Sessions Judge in C.C.No.6 of 2004 dated 05.09.2004, observed as under:-

"It has also held that the petitioner was subjected to custodial

torture. The only point for determination is whether the accused had beat P.W.5 Anand and caused greivous injury to his right thump as alleged by the complainant. There was a case registered as girl missing at Sholavandan Police station. It was alleged that one Pandiarajan had kidnapped a girl at Sholavandan. P.W.5 is a taxi driver. The accused who was the Inspector of Police Sholavandan Police station for the purpose of investigation in the said Kadupattu case took P.W.5 to the Police station on the pretext of enquiry, on 17.08.2003. This fact was spoken to by P.W.1 the mother of P.W.5 Anand, P.W.2 the brother of Anand, and P.W.3 the sister of Anand and P.W.4 the ward member of Sholavandan and also by P.W.5 Anand himself. P.W.2 the brother of P.W.5 had deposed that since Anand did not return to the house he along with P.W.4 a ward member of Sholavandan Panchayat went to Kadupatti Police station on 18.04.2003, to Sholavandan Police station on 19.04.2003, on 20.04.2003 to Samayanallur Police station to see his brother. But the Police refused him to allow him to see his brother and his brother Anand returned to his house only on 22.04.2003 midnight with swelling all over his body. The fact that the brother of P.W.5 Anand viz., Mari was went to the above said Police station in search of Anand was corroborated by P.W.4 Pandian a ward member of Sholavandan Panchayat. P.W.5 the victim Anand has categorically stated what had happened to him from 17.04.2003 to 21.04.2003 in Kadupatti Police station. He has stated that with the help of waste rope the accused Inspector of Police tied his right thump bending backward and beat with lathi causing fracture on the right thump and due to it e could not even take his meals with the help of right hand and he has also spoken to the fact that on the pretext of interrogation the Inspector of

Police, Kallifulla beat him with lathi all over his body and only after hearing the news through telephone that the missing girl was rescued he allowed him to go to his house in the mid night on 21.04.2003 and that he came to the house that on seeing injuries all over the body his mother P.W.1 took him to the hospital and the fact that Anand P.W.5 was admitted in Madurai Government Rajaji Hospital was spoken to by P.W.6 the Doctor who had treated him and from Ex.P.5 wound certificate issued by P.W.6 the Doctor it is seen that the right thump bone of P.W.5 was fractured and a surgery was conducted and plates were inserted to set right the fracture. The x-rays taken to P.W.5 are M.O.1 series. So it is clear from the evidence of P.Ws 1 to 6 that the accused had committed an offence under Section 324 IPC r/w 30 of Human Rights Act. Even at the fact end of the 21st century the Police are still resorting to third degree methods while interrogating such type of minor offences, without seeking scientific aids like lie detector etc., The act of the accused who is none less than an experienced Gazetted Police officer, without following the fundamental rights enshrined in the Constitution of India had violated all rules and regulations had tortured and fractured the right thump of P.W.5 Anand on the pretext of investigation in a kidnapped case in which P.W.5 Anand is not the main accused. Hence I hold on the point that the guilt under Section 324 IPC r/w 30 of Humal Rights Act has been proved beyond any reasonable doubt."

9. In *D.K.BASU vs. STATE OF WEST BENGAL* {(1997) 1 SCC - 416}, the Hon'ble Supreme Court has quoted several authors defining

torture as under-

"10. 'Torture' has not been defined in the Constitution or in other penal laws. 'Torture' of a human being by another human being is essentially an instrument to impose the will of the 'strong' over the 'weak' by suffering. The word torture today has become synonymous with the darker side of human civilisation.

'Torture is a wound in the soul so painful that sometimes you can almost touch it, but it is also so intangible that there is no way to heal it. Torture is anguish squeezing in your chest, cold as ice and heavy as a stone, paralysing as sleep and dark as the abyss. Torture is despair and fear and rage and hate. It is a desire to kill and destroy including yourself.'

– Adriana P. Bartow

11. No violation of any one of the human rights has been the subject of so many conventions and declarations as 'torture' – all aiming at total banning of it in all forms, but in spite of the commitments made to eliminate torture, the fact remains that torture is more widespread now than ever before. 'Custodial torture' is a naked violation of human dignity and degradation which destroys, to a very large extent, the individual personality. It is a calculated assault on human dignity and whenever human dignity is wounded, civilisation takes a step backward – flag of humanity must on each such occasion fly half-mast.

12. In all custodial crimes what is of real concern is not only infliction of body pain but the mental agony which a person undergoes within the four walls of police station or lock-up. Whether it is physical assault or rape in police custody, the extent of trauma, a person experiences is beyond the purview of law."

(emphasis in original)

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10. In **JOGINDER KUMAR Vs. STATE OF UTTAR PRADESH**

{(1994) 4 SCC - 260} the Hon'ble Supreme Court has observed as

under:-

"20.It is worthy to note that in D.K. Basu [(1997) 1 SCC 416 : 1997 SCC (Cri) 92 : AIR 1997 SC 610] , the concern shown by this Court in Joginder Kumar v. State of U.P. [(1994) 4 SCC 260 : 1994 SCC (Cri) 1172] was taken note of. In Joginder Kumar case [(1994) 4 SCC 260 : 1994 SCC (Cri) 1172] this Court voiced its concern regarding complaints of violation of human rights during and after arrest. It is apt to quote a passage from the same: (Joginder Kumar case [(1994) 4 SCC 260 : 1994 SCC (Cri) 1172] , SCC pp. 263-64, paras 8-9)

"8. The horizon of human rights is expanding. At the same time, the crime rate is also increasing. Of late, this Court has been receiving complaints about violation of human rights because of indiscriminate arrests. How are we to strike a balance between the two?

9. A realistic approach should be made in this direction. The law of arrest is one of balancing individual rights, liberties and privileges, on the one hand, and individual duties, obligations and responsibilities on the other; of weighing and balancing the rights, liberties and privileges of the single individual and those of individuals collectively; of simply deciding what is wanted and where to put the weight and the emphasis; of deciding which comes first – the criminal or society, the law violator or the law abider...."

11. In **SELVI VS.STATE OF KARNATAKA {(2010) 7 SCC 263}**,

the Hon'ble Supreme Court has held as follows:-

“244. ... The popular perceptions of terms such as ‘torture’ and ‘cruel, inhuman or degrading treatment’ are associated with gory images of blood-letting and broken bones. However, we must recognise that a forcible intrusion into a person’s mental processes is also an affront to human dignity and liberty, often with grave and long-lasting consequences. [A similar conclusion has been made in the following paper: Marcy Strauss, ‘Criminal Defence in the Age of Terrorism – Torture’. [48 New York Law School Law Review 201-74 (2003/2004)]]”

12. After analysing all the above mentioned judgments, the Hon'ble Supreme Court in **MEHMOOD NAYYAR AZAM Vs. STATE OF CHATTISGARH {(2012) 8 SCC - 1}**, the Hon'ble Supreme Court has observed as under:-

“36. From the aforesaid discussion, there is no shadow of doubt that any treatment meted out to an accused while he is in custody which causes humiliation and mental trauma corrodes the concept of human dignity. The majesty of law protects the dignity of a citizen in a society governed by law. It cannot be forgotten that the welfare State is governed by the rule of law which has paramountcy. It has been said by Edward Biggon “the laws of a nation form the most instructive portion of its history”. The Constitution as the organic law of the land has unfolded itself in a manifold manner like a living organism in the various decisions of the court about the rights

of a person under Article 21 of the Constitution of India. When citizenry rights are sometimes dashed against and pushed back by the members of City Halls, there has to be a rebound and when the rebound takes place, Article 21 of the Constitution springs up to action as a protector. That is why, an investigator of a crime is required to possess the qualities of patience and perseverance as has been stated in Nandini Satpathy v. P.L. Dani[(1978) 2 SCC 424 : 1978 SCC (Cri) 236 : AIR 1978 SC 1025]

38. It is imperative to state that it is the sacrosanct duty of the police authorities to remember that a citizen while in custody is not denuded of his fundamental right under Article 21 of the Constitution. The restrictions imposed have the sanction of law by which his enjoyment of fundamental right is curtailed but his basic human rights are not crippled so that the police officers can treat him in an inhuman manner. On the contrary, they are under obligation to protect his human rights and prevent all forms of atrocities. We may hasten to add that a balance has to be struck and, in this context, we may fruitfully quote a passage from D.K. Basu[(1997) 1 SCC 416 : 1997 SCC (Cri) 92 : AIR 1997 SC 610] : (SCC pp. 434-35, para 33)

“33. There can be no gainsaying that freedom of an individual must yield to the security of the State. The right of preventive detention of individuals in the interest of security of the State in various situations prescribed under different statutes has been upheld by the courts. The right to interrogate the detenus,

culprits or arrestees in the interest of the nation, must take precedence over an individual's right to personal liberty. ... The action of the State, however, must be 'right, just and fair'. Using any form of torture for extracting any kind of information would neither be 'right nor just nor fair' and, therefore, would be impermissible, being offensive to Article 21. Such a crime suspect must be interrogated – indeed subjected to sustained and scientific interrogation – determined in accordance with the provisions of law. He cannot, however, be tortured or subjected to third-degree methods or eliminated with a view to elicit information, extract confession or derive knowledge about his accomplices, weapons, etc. His constitutional right cannot be abridged [except] in the manner permitted by law, though in the very nature of things there would be qualitative difference in the method of interrogation of such a person as compared to an ordinary criminal.”

(emphasis in original)

40 .As we perceive, from the admitted facts borne out on record, the appellant has been humiliated. Such treatment is basically inhuman and causes mental trauma. In Kaplan and Sadock's Synopsis of Psychiatry, while dealing with torture, the

learned authors have stated that intentional physical and psychological torture of one human by another can have emotionally damaging effects comparable to, and possibly worse than, those seen with combat and other types of trauma. Any psychological torture inflicts immense mental pain. A mental suffering at any age in life can carry the brunt and may have nightmarish effect on the victim. The hurt develops a sense of insecurity, helplessness and his self-respect gets gradually atrophied. We have referred to such aspects only to highlight that in the case at hand, the police authorities possibly had some kind of sadistic pleasure or to “please someone” meted out the appellant with this kind of treatment.

*41.It is not to be forgotten that when dignity is lost, the breath of life gets into oblivion. In a society governed by the rule of law where humanity has to be a laser beam, as our compassionate Constitution has so emphasised, the police authorities cannot show the power or prowess to vivisect and dismember the same. When they pave such path, law cannot become a silent spectator. As pithily stated in *Jennisonv.Baker*[(1972) 2 QB 52 : (1972) 2 WLR 429 : (1972) 1 All ER 997 (CA)] : (QB p. 66 H)*

“ ... ‘The law should not be seen to sit by limply, while those who defy it go free, and those who seek its protection lose hope.’” (All ER p. 1006d)

42.Presently, we shall advert to the aspect of grant of compensation. The learned counsel for the State, as has been indicated earlier, has submitted with immense vehemence that

the appellant should sue for defamation. Our analysis would clearly show that the appellant was tortured while he was in custody. When there is contravention of human rights, the inherent concern as envisaged in Article 21 springs to life and enables the citizen to seek relief by taking recourse to public law remedy."

Applying the law laid down by the Hon'ble Supreme Court on the facts of the present case and more particularly, taking into account the findings rendered by the Principal District and Sessions Judge, there cannot be any doubt that the petitioner was subjected to custodial torture by the respondent No.5 and the State Government is vicariously liable for the acts of respondent No.5.

13. It is strenuously contended that the petitioner is not entitled to two compensations for the same incident. It is stated that the Principal District and Sessions Judge has already granted a compensation of Rs.3,500/-. This argument raised by the appellants has been considered and rejected by Courts.

14. It is well settled that a claim in public law for

compensation for contravention of human rights and liberty which is guaranteed under the Constitution is a well acknowledged remedy for enforcement of such rights. It is also well settled that the claim for compensation under public law remedy is a constitutional remedy provided for enforcement of fundamental rights and is distinct from and in addition to other remedies available under various statutes. The Hon'ble Supreme Court, in NILABATI BEHERA Vs. STATE OF ORISSA {(1993) 2 SCC - 746} has held that the relief of compensation in proceedings under Article 32 by the Supreme Court or under Article 226 by the High Court for the infringement of indefeasible rights guaranteed under Article 21 of the Constitution of India is a remedy available in public law and is based on the principle of strict liability for contravention of the guaranteed basic rights of the citizen. The Hon'ble Supreme Court in the said judgment has held that the purpose of public law is not only to civilize public power but also to assure the citizen that they live under a legal system which aims to protect their interests and preserve their rights. While enforcing and protecting the rights guaranteed under Article 21, the Courts while granting relief under public law penalises the wrong doer and fixes

the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizen. The Hon'ble Supreme Court in the said judgment has stated that the payment of compensation in such cases is not to be understood, as it is generally understood in civil action for damages under the private law but in the broader sense of providing relief by an order of making 'monetary amends' under the public law for the wrong done due to breach of public duty of not protecting the fundamental rights of the citizen. The compensation under public law remedy is in the nature of exemplary damages awarded against the State for the breach of its public law duty and is independent of the rights available to the aggrieved party to claim compensation under the ordinary law of land which may be an action based on tort, through a suit instituted in a Court of competent jurisdiction or an action to prosecute the offender under the penal law.

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15. In *SUBE SINGH Vs. STATE OF HARYANA* {(2006) 3 SCC - 178} while dealing with a case of custodial torture a three Judge Bench of the Hon'ble Supreme Court, observed as under:-

"38. It is thus now well settled that award of compensation against the State is an appropriate and effective remedy for redress of an established infringement of a fundamental right under Article 21, by a public servant. The quantum of compensation will, however, depend upon the facts and circumstances of each case. Award of such compensation (by way of public law remedy) will not come in the way of the aggrieved person claiming additional compensation in a civil court, in the enforcement of the private law remedy in tort, nor come in the way of the criminal court ordering compensation under section 357 of Code of Criminal Procedure."

46. In cases where custodial death or custodial torture or other violation of the rights guaranteed under Article 21 is established, courts may award compensation in a proceeding under Article 32 or 226. However, before awarding compensation, the Court will have to pose to itself the following questions : (a) Whether the violation of Article 21 is patent and incontrovertible, (b) whether the violation is gross and of a magnitude to shock the conscience of the court, (c) whether the custodial torture alleged has resulted in death or whether custodial torture is supported by medical report or visible marks or scars or disability. Where there is no evidence of custodial torture of a person except his own statement, and where such allegation is not supported by any medical report or other corroborative evidence, or where there are clear indications that the allegations are false or exaggerated fully or in part, courts may not award compensation as a public law remedy under Article 32 or 226, but relegate the aggrieved

party to the traditional remedies by way of appropriate civil/criminal action."

51. This order will not come in the way of any civil court awarding compensation in an action in tort or the criminal court awarding compensation under section 357 CPC in the pending prosecution against any of the officers, if the charges are established. With the said observations, we dispose of this petition, as no further reliefs/directions are called for."

16. The Hon'ble Supreme Court in **S.NAMBI NARAYANAN Vs. SIBY MATHEWES AND OTHERS** {(2018) 10 SCC -= 804}, has observed as under:-

"40.If the obtaining factual matrix is adjudged on the aforesaid principles and parameters, there can be no scintilla of doubt that the appellant, a successful scientist having national reputation, has been compelled to undergo immense humiliation. The lackadaisical attitude of the State Police to arrest anyone and put him in police custody has made the appellant to suffer the ignominy. The dignity of a person gets shocked when psycho-pathological treatment is meted out to him. A human being cries for justice when he feels that the insensible act has crucified his self-respect. That warrants grant of compensation under the public law remedy. We are absolutely conscious that a civil suit has been filed for grant of compensation. That will not debar the constitutional court to grant compensation taking recourse to public law. The Court

cannot lose sight of the wrongful imprisonment, malicious prosecution, the humiliation and the defamation faced by the appellant.

41. In *Sube Singh v. State of Haryana* [Sube Singh v. State of Haryana, (2006) 3 SCC 178 : (2006) 2 SCC (Cri) 54], the three-Judge Bench, after referring to the earlier decisions, has opined: (SCC pp. 198-99, para 38)

“38. It is thus now well settled that the award of compensation against the State is an appropriate and effective remedy for redress of an established infringement of a fundamental right under Article 21, by a public servant. The quantum of compensation will, however, depend upon the facts and circumstances of each case. Award of such compensation (by way of public law remedy) will not come in the way of the aggrieved person claiming additional compensation in a civil court, in the enforcement of the private law remedy in tort, nor come in the way of the criminal court ordering compensation under Section 357 of the Code of Criminal Procedure.”

42. In *Hardeep Singh v. State of M.P.* [Hardeep Singh v. State of M.P., (2012) 1 SCC 748 : (2012) 1 SCC (Cri) 684], the Court was dealing with the issue of delayed trial and the humiliation faced by the appellant therein. A Division Bench of the High Court in intra-court appeal had granted [Hardeep Singh Anand v. State of M.P., 2008 SCC OnLine MP 501 : 2008 Cri LJ 3281] compensation of Rs 70,000. This Court, while dealing with the quantum of compensation, highlighted the suffering and humiliation caused to the appellant and enhanced the compensation.

17. In view of the above, we do not find any infirmity with the judgment of the learned Single Judge. The writ appeal is dismissed. No costs. Consequently, the connected Civil Miscellaneous Petition No.24031 of 2019 is closed.

(A.P.S., C.J.) (S.P.,J.)
21/1/2020

Index : Yes/No

Internet: yes/No

Speaking/Non-speaking order

mvs/pkn.



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W.A.No.3806 of 2019

THE HON'BLE CHIEF JUSTICE
and
SUBRAMONIUM PRASAD, J.

mvs/pkn.



Pre-delivery Judgment in
Writ Appeal No.3806 of 2019

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21/1/2020



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